## APPENDIX A

---

### SUMMARY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW OF DISTRICT COURT

(1) Judge Tuttle stated that the first question of fact is —did Walter Eddy on January 30, 1908, "purchase in an honest bargain" and "in an honest deal" from his sister all her stock in C. K. Eddy and Sons (R. 89).

To which Petitioners and Appellants reply—that whether it was an "honest deal" depends upon whether Walter Eddy, as Trustee, gave full information to his sister of all material facts—which he certainly did not, upon this record.

(2) The other question of fact is—did Arthur D. Eddy on March 11, 1920 "in an honest bargain" buy from his sister Lila "all her interest in Walter Eddy's Estate, or did he defraud her"? (R. 90.)

To which appellants make the same reply.

(3) On these two questions of fact the burden rests upon Mrs. Doebler's Administrator, and he must prove fraud, by "convincing proof" (R. 90).

Appellants submit that this is not the rule, as between trustees and *cestui que* trust—see cases under Point I.

(4) That there is not one scintilla of proof of such fraud on either question of fact (R. 91).

Appellants again submit the entire record conclusively shows the contrary.

(5) It has not been proved that the consideration paid was inadequate (R. 91).

Appellants submit the contrary was conclusively proved.

(6) That the said Lila was anxious to make the deal with Arthur Eddy in 1919, was the one that urged it and sought it (R. 91).

Appellants reply that Mrs. Doebler was justified in wishing to sell her interests—and that this was no reason or excuse for her brother, Arthur Eddy, to defraud her.

(7) That C. K. Eddy and Sons have very fine records and easy to read and that "the files in this case have spoken more eloquently than any witness could speak from memory" (R. 91).

Appellants admit the C. K. Eddy and Sons records prove their case for them conclusively.

(8) All three children, Walter, Arthur and Lila had unusual business ability. Lila had intervals "when her mind wasn't good" but for the greater period, she was a lucid, keen, capable individual and was capable of understanding a deal beyond the average individual (R. 92).

Appellants submit that Mrs. Doebler was no match for her brother Arthur—when he possessed all the inside information of the true worth of C. K. Eddy and Sons—and its huge profits in the years of 1901 to 1920.

(9) That the letters between Arthur Eddy and his sister Lila in 1919 show conclusively he did not want her "to get out of the corporation." He wanted her to stay in (R. 92).

Appellants reply that Arthur Eddy's letter of May 9, 1919 (Exhibit 105, R. 442) opened the discussion and subject as to whether his sister, Mrs. Doebler, should sell out or not.

(10) C. K. Eddy and Sons was a complicated and big business. The brothers had "peculiar ability" (R. 92).

Appellants reply that this was all the more reason why Arthur Eddy was under the absolute duty to disclose all facts to his sister about C. K. Eddy and Sons.

(11) Mrs. Doebler lived at a distance and was "spending her share of the money." Her brothers wanted her to stay in the Company (R. 92).

To which appellants make the same reply—and further that Mrs. Doebler never spent even the small amounts relatively coming to her in the years 1908 to 1920—See Record 67, 68.

(12) The sister's second husband, John McCurdy, was a lawyer and witnessed the first contract of January 30, 1908. He would be interested in seeing "she got what was coming to her" (R. 92).

Appellants reply there is no proof that Mr. McCurdy knew his wife's 7812½ shares were worth $1,000,000.00 in 1908 and were earning over $100,000 each year in the years 1904 to 1907, inclusive.

(13) She wanted a fixed income and took it, $15,000 a year for life. That is a very large sum. Capitalized, it was worth $359,000. She got $15,000 a year and $48,000 in cash for her interests in January, 1908 (R. 93).

Appellants submit the same reply and that two per cent per annum—and nothing for the principal—constitutes gross fraud.

(14) Mrs. Doebler in 1919 wanted to get out of the Company and sent her lawyer and husband to Saginaw. They couldn't sell her interests for her. Arthur Eddy wasn't anxious to make a deal.

Then Mrs. Doebler scolded Arthur and coaxed him and urged him to make a deal. He was not urging her to sell or trying to force her to do it (R. 93).

Appellants submit that Arthur Eddy's delay in settling Walter's Estate was a deliberate, if indirect, way of tiring and worrying his sister into sacrificing her interests by a sale to him—finally completed in March, 1920, nearly two years after Walter Eddy died in August, 1918.

(15) And Judge Tuttle says that when Mrs. Doebler wished to spend $68,000 for a home—her brother Arthur didn't ask her to sell her stock to get the money, but he writes her that she has a balance and that he will "hustle around and get enough so she can get all the money she needs" (R. 94).

Appellants submit no further reply than their brief—to such logic of the Lower Court.

(16) That $68,000 doesn't grow on bushes—that part of the brother's job was "to finance his sister and her numerous husbands" and he is willing to do it and offers to do it—and is willing to give her the money owing her on the Company's books (R. 94).

Appellants make the same reply.

(17) That in 1919, Mrs. Doebler was represented by a good lawyer and C. K. Eddy and Sons was represented by a good lawyer and they drew up the agreement of March 11, 1920. That it was a big deal drawn up by capable men (R. 94).

Appellants make the same reply.

(18) After the deal of March, 1920, was made, Arthur Eddy cautioned her to be careful how she spent it and that he did not "lose interest in her". That Arthur Eddy cautioned her not to let her third husband run through this money—money that is worth saving—"needed" (R. 94).

Appellants submit that after Arthur Eddy had taken Mrs. Doebler's interests from her in 1920, for one-third

of their true worth—that he carefully tied up the $760,000 by a trust agreement (R. 46) dated March 11, 1920 (permitting her to spend only the income) and there is, therefore, no sense to Judge Tuttle's comment.

(19) That the bargain of March 11, 1920 was forced upon Arthur by his sister "and not she led by him. The moving force in that bargain was the sister." "She sought it and she made it with good ability and shrewdness" and "with her eyes open" (R. 95).

Appellants reply by referring to their brief—and the record, which shows conclusively deliberate, fraudulent concealment and active misrepresentation by Arthur Eddy.

(20) That she knew about the amount of stock and the assets owned by C. K. Eddy and Sons and there is nothing to the claim that she did not. That this is shown by the deposition of her husband, Mr. Doebler (R. 95).

Appellants reply the record is just the reverse—and challenge counsel for the counter-defendants to cite one single page in the record, even tending to support the Lower Court's Finding, much less tending to meet the burden of proof resting upon a trustee to justify his purchase from his *cestui que* trust.

(21) That the books of C. K. Eddy and Sons were well kept and that Walter and Arthur Eddy "kept them as good, practical, hard-headed business men would keep them" (R. 95).

Appellants reply that Kins Collins' audit of these very books, now shows beyond any doubt that Mrs. Doebler was shamefully defrauded by Arthur Eddy.

(22) That Walter Eddy shifted his bargain and deal with his sister, Mrs. Doebler, of January 30, 1908, "for this stock over to the corporation because it involved the

corporation in a way, and he shifted that to the corporation."

*That if any advantage over the sister was gained by the first contract of January 30, 1908, by Walter Eddy, "he gave it over to the corporation. You have to admit that. At that time if Walter made a fortune in his bargain with Lila, he turned right around and gave it to the Corporation"* (R. 96).

To which appellants reply that giving "the fortune" taken from their sister in 1908—does not entitle Walter and Arthur Eddy to it—just because they covered it up in a corporation, they alone owned.

And petitioners and appellants further reply that no such issue of any alleged transfer of Mrs. Doebler's 7812½ shares by Walter Eddy in 1914 to C. K. Eddy and Sons, is raised by the pleadings or decided by either of the Lower Courts.

(23) That if Mrs. Doebler had stayed in the corporation "as Arthur wanted her to" she would have had her share of all the profits which finally came out of the Eddy and Glynn co-partnership (R. 96).

Appellants reply that if Arthur Eddy had not concealed over $1,500,000 of assets (the reserve account of $950,000 and the co-partnership profits of over $600,000) maybe Mrs. Doebler would have stayed in the Company—rather than take one-third of her shares' value.

(24) That Mrs. Doebler wanted to get out of the Corporation because "she wanted to get more money." That Mrs. Doebler wasn't willing to play the game and let it multiply and look into the future and get more money—"she wanted to get it all now" (R. 96).

Appellants make no further reply to this "logic," but refer to their brief.

(25) That Arthur Eddy didn't want Mrs. Doebler to get out of the corporation and he was willing to do the work. Mrs. Doebler didn't want to be bothered with the income tax of $100,000 on her dead brother's estate. Arthur has to do these things (R. 96).

Appellants make the same reply.

(26) That there is nothing to indicate that Mrs. Doebler "didn't know all that could be known about the affairs of this corporation. Everything indicates just the contrary * * *. All goes to show that she knew all that she was doing" (R. 96).

Appellants challenge counter-defendants to cite one page in the record tending to prove that Mrs. Doebler in 1919 or 1920—knew anything about the hidden reserve account of $950,000 or the Eddy and Glynn profits of $600,000—

or that she had any knowledge other than that given by the false inventory and appraisal filed in March, 1919, of Walter's Estate—See Exhibit A, R. 33.

(27) That in the United States, if you deal honestly and somebody is urging you to get out, you (Arthur Eddy) have a right to make a deal in a way that you "make money" (R. 97).

Appellants respectfully submit, that neither in the United States or elsewhere may a trustee take such advantage of a *cestui que* trust as this record discloses—and to support their contention, appellants cite *Cowen v. Adams, supra,* and *Eddy v. Eddy, supra.*

(28) That it wouldn't shock Judge Tuttle's conscience at all under this situation, "if Arthur Eddy made money

on the deal that he made with his sister, in March, 1920." "That wouldn't upset him" (R. 97).

Appellants submit that counter-defendants and respondents cannot cite one single decision of the Supreme Court or of the Sixth Circuit Court of Appeals as authority for such a doctrine.

(29) That the uncertainties of the business of C. K. Eddy and Sons and the uncertainties of Arthur Eddy's life were apparent, that his sister didn't know how long her brother Arthur would "live."

That anybody with good intelligence would know that C. K. Eddy and Sons' business "couldn't go on indefinitely with those big profits."

That anybody with intelligence would know that when Arthur Eddy died, "the business couldn't go on just as it had in the past" (R. 97).

Appellants again submit that this finding is a complete justification for Mrs. Doebler's "worry" over her interests—and that she was entirely justified in wishing to sell out in her brother Arthur's lifetime.

(30) That no one other than Walter and Arthur Eddy could carry on the business after they died. No Trust Company nor any one the Court could appoint could "get the successful men" (R. 97).

Appellants make the same reply.

(31) That Mrs. Doebler and Arthur Eddy both knew the uncertainties of C. K. Eddy and Sons and that when Arthur Eddy was dealing with his sister, "he let her take the choice of the things they had, the sure things, and left for him the opportunity to go and play the game with the uncertain things" (R. 97).

Appellants reply that this finding is based apparently on Arthur's fraudulent misrepresentation that such was the fact, whereas the record now discloses that Arthur Eddy kept for himself over $1,000,000 of gilt-edged securities, as well as $2,000,000 of good stocks—see Record 457, 458.

(32) That the amounts which Walter Eddy and Arthur Eddy in January 1908 and March 1920, gave their sister, Mrs. Doebler, were equitable, honest and a fair consideration.

That this was so when "you see that she was the one who wanted it, urged it, offered it, that even though the amount had been less, it was a fair compensation" (R. 97).

Appellants reply that—

(a) The 1908 deal giving her nothing for the principal of her $1,000,000 in stock is ruled by *Cowen v. Adams, supra* (6 C. C. A.).

(d) The 1920 deal with Arthur Eddy, giving Mrs. Doebler about one-third of what her interests were actually worth, is ruled by *Eddy v. Eddy, supra* (6 C. C. A.).

Appellants respectfully submit it has never been considered "fair compensation" by any appellate court of equity—for a trustee to defraud his *cestui que* trust out of two-thirds of her trust estate, by a fraudulent concealment and active, positive misstatements of material facts.

(33) That Mrs. Doebler made the deal with her eyes open, knowing that when someone wishes to sell and someone wishes to buy at a price that is fair and that they do it with their eyes open, knowing all about it, and they understand the situation, "then it is a fair deal and it is binding" (R. 97, 98).

Appellants respectfully submit the entire record on this appeal proves conclusively just the reverse of this finding.

(34) Judge Tuttle then states "that being the kind of a deal we have, I don't have to bother with what the law is." That all he, the Court, needs to do is to "be able to judge facts, understand people by the written records they have left and the good books they have kept and the complete file they have kept of the transaction and say that this deal between those two brothers and their sister was an honest, fair, upright deal" (R. 98).

Appellants respectfully refer to their brief, *ante,* for their position on this finding—and

submit that C. K. Eddy and Sons' books and records, in evidence in this case, now show conclusively that Mrs. Doebler was shamefully defrauded by her brothers—and

that the testimony of Kins Collins, our expert accountant, so shows—and is and was undisputed by counter-defendants.